United Nations A/73/556

General Assembly

Distr.: General
13 November 2018

Original: English

Seventy-third session
Agenda item 82

Report of the International Law Commission on the work of its seventieth session

Report of the Sixth Committee

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I. Introduction

1. The item entitled "Report of the International Law Commission on the work of its seventieth session" was included in the provisional agenda of the seventy-third session of the General Assembly pursuant to Assembly resolution 72/116 of 7 December 2017.

2. At its 3rd plenary meeting, on 21 September 2018, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.

3. The Sixth Committee considered the item at its 20th to 30th and 35th meetings, from 22 to 26 October, on 30 and 31 October and on 13 November 2018. The views of the representatives who spoke during the Committee's consideration of the item are reflected in the relevant summary records.[1]

4. For its consideration of the item, the Committee had before it the report of the International Law Commission on the work of its seventieth session (A/73/10).

5. The Chair of the International Law Commission at its seventieth session introduced the report of the Commission on the work of that session: chapters I to V, XII and XIII at the 20th meeting, on 22 October, chapters VI to VIII at the 24th meeting, on 25 October, and chapters IX to XI at the 28th meeting, on 30 October.

[1] A/C.6/73/SR.20, A/C.6/73/SR.21, A/C.6/73/SR.22, A/C.6/73/SR.23, A/C.6/73/SR.24, A/C.6/73/SR.25, A/C.6/73/SR.26, A/C.6/73/SR.27, A/C.6/73/SR.28, A/C.6/73/SR.29, A/C.6/73/SR.30 and A/C.6/72/SR.35.

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II. Consideration of proposals

A. Draft resolution A/C.6/73/L.22

6. At the 35th meeting, on 13 November, the representative of Peru, on behalf of the Bureau, introduced a draft resolution entitled "Report of the International Law Commission on the work of its seventieth session" (A/C.6/73/L.22). The Committee also had before it a statement submitted by the Secretary-General in accordance with rule 153 of the rules of procedure of the General Assembly concerning the programme budget implications of draft resolution A/C.6/73/L.22 (A/C.6/73/L.29).

7. At the same meeting, the Committee adopted draft resolution A/C.6/73/L.22 without a vote (see para. 12, draft resolution I).

B. Draft resolution A/C.6/73/L.23

8. At the 35th meeting, on 13 November, the representative of Belarus, on behalf of the Bureau, introduced a draft resolution entitled "Subsequent agreements and subsequent practice in relation to the interpretation of treaties" (A/C.6/73/L.23).

9. At the same meeting, the Committee adopted draft resolution A/C.6/73/L.23 without a vote (see para. 12, draft resolution II).

C. Draft resolution A/C.6/73/L.24

10. At the 35th meeting, on 13 November, the representative of Georgia, on behalf of the Bureau, introduced a draft resolution entitled "Identification of customary international law" (A/C.6/73/L.24).

11. At the same meeting, the Committee adopted draft resolution A/C.6/73/L.24 without a vote (see para. 12, draft resolution III).

III. Recommendation of the Sixth Committee

12. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolutions:

Draft resolution I
Report of the International Law Commission on the work of its seventieth session

The General Assembly,

Having considered the report of the International Law Commission on the work of its seventieth session,[1]

Emphasizing the importance of furthering the progressive development and codification of international law as a means of implementing the purposes and principles set forth in the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,[2]

Recognizing the desirability of referring legal and drafting questions to the Sixth Committee, including topics that might be submitted to the International Law Commission for closer examination, and of enabling the Sixth Committee and the Commission to enhance further their contribution to the progressive development and codification of international law,

Recalling the need to keep under review those topics of international law which, given their new or renewed interest for the international community, may be suitable for the progressive development and codification of international law and therefore may be included in the future programme of work of the International Law Commission,

Recalling also the role of Member States in submitting proposals for new topics for the consideration of the International Law Commission, and noting in this regard the recommendation of the Commission that such proposals be accompanied by a statement of reasons,

Reaffirming the importance for the successful work of the International Law Commission of the information provided by Member States concerning their views and practice,

Recognizing the importance of the work of the special rapporteurs of the International Law Commission,

Welcoming the holding of the International Law Seminar, and noting with appreciation the voluntary contributions made to the United Nations trust fund for the International Law Seminar,

Acknowledging the importance of facilitating the timely publication of the *Yearbook of the International Law Commission* and of eliminating the backlog,

Stressing the usefulness of focusing and structuring the debate on the report of the International Law Commission in the Sixth Committee in such a manner that conditions are provided for concentrated attention to each of the main topics dealt with in the report and for discussions on specific topics,

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[1] *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10* (A/73/10).

[2] Resolution 2625 (XXV), annex.

Wishing to enhance further, in the context of the revitalization of the debate on the report of the International Law Commission, the interaction between the Sixth Committee as a body of governmental representatives and the Commission as a body of independent legal experts, with a view to improving the dialogue between the two bodies,

Welcoming initiatives to hold interactive debates, panel discussions and question time in the Sixth Committee, as envisaged in General Assembly resolution 58/316 of 1 July 2004 on further measures for the revitalization of the work of the Assembly,

Welcoming also the seventieth anniversary commemorative meetings held in New York and Geneva, which took place under the overarching theme of "70 years of the International Law Commission — Drawing a balance for the future", as well as the discussions which took place, inter alia, on the working methods of the Commission,

1. *Takes note* of the report of the International Law Commission on the work of its seventieth session;[1]

2. *Expresses its appreciation* to the International Law Commission for the work accomplished at its seventieth session, and notes in particular:

(a) The completion of the second reading of the draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties;[3]

(b) The completion of the second reading of the draft conclusions on identification of customary international law;[4]

(c) The completion of the first reading of the draft guidelines on the protection of the atmosphere;[5]

(d) The completion of the first reading of the draft Guide to Provisional Application of Treaties;[6]

3. *Recommends* that the International Law Commission continue its work on the topics in its current programme of work, taking into account the comments and observations of Governments, whether submitted in writing or expressed orally in debates in the Sixth Committee;

4. *Draws the attention* of Governments to the importance for the International Law Commission of having their views by 31 December 2018 on the various aspects of the topics on the agenda of the Commission, in particular on all the specific issues identified in chapter III of its report, regarding:

(a) Peremptory norms of general international law (*jus cogens*);

(b) Immunity of State officials from foreign criminal jurisdiction;

(c) Protection of the environment in relation to armed conflicts;

(d) Succession of States in respect of State responsibility;

5. *Also draws the attention* of Governments to the importance for the International Law Commission of having their comments and observations on the

[3] See *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10* (A/73/10), chap. IV, sect. E.

[4] Ibid., chap. V, sect. E.

[5] Ibid., chap. VI, sect. C.

[6] Ibid., chap. VII, sect. C.

draft articles on crimes against humanity, adopted on first reading by the Commission at its sixty-ninth session;[7]

6. *Further draws the attention* of Governments to the importance for the International Law Commission of having their comments and observations by 15 December 2019 on the draft guidelines on the protection of the atmosphere and on the draft Guide to Provisional Application of Treaties, adopted on first reading by the Commission at its seventieth session;[8]

7. *Takes note* of the decision of the International Law Commission to include the topic "General principles of law" in its programme of work,[9] and encourages the Commission to continue the examination of the topics that are in its long-term programme of work;[10]

8. *Encourages* the International Law Commission to take into account the capacity and views of Member States when including topics in its current programme of work;

9. *Takes note* of paragraphs 368 to 370 of the report of the International Law Commission and notes, in particular, the inclusion of the topics "Universal criminal jurisdiction" and "Sea-level rise in relation to international law" in the long-term programme of work of the Commission,[11] and in this regard calls upon the Commission to take into consideration the comments, concerns and observations expressed by Governments during the debate in the Sixth Committee;

10. *Also takes note* of the holding of the first part of the seventieth session of the International Law Commission at United Nations Headquarters, in New York, from 30 April to 1 June 2018, which coincided with the commemoration of the seventieth anniversary of the Commission, and of the second part of the session at the United Nations Office at Geneva, from 2 July to 10 August 2018;

11. *Further takes note* of paragraphs 331 to 362 of the report of the International Law Commission and commends the convening of the seventieth anniversary commemorative meetings in New York on 21 May 2018 and in Geneva on 5 and 6 July 2018, and also expresses its appreciation to the Member States, the academic institution and others, which have made financial contributions and contributions in kind to facilitate the commemoration of the seventieth anniversary of the Commission;

12. *Takes note* of paragraph 382 of the report of the International Law Commission, and requests the Secretary-General to continue his efforts to identify concrete options for support for the work of special rapporteurs, additional to those provided under General Assembly resolution 56/272 of 27 March 2002;

13. *Welcomes* the efforts of the International Law Commission to improve its methods of work,[12] and encourages the Commission to continue this practice;

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[7] Ibid., *Seventy-second Session, Supplement No. 10* (A/72/10), para. 43.

[8] Ibid., *Seventy-third Session, Supplement No. 10* (A/73/10), paras. 76 and 88.

[9] Ibid., para. 363.

[10] The following topics are currently in the long-term programme of work of the International Law Commission: "Ownership and protection of wrecks beyond the limits of national maritime jurisdiction", "Jurisdictional immunity of international organizations", "Protection of personal data in transborder flow of information", "Extraterritorial jurisdiction", "The fair and equitable treatment standard in international investment law", "Settlement of international disputes to which international organizations are parties", "Evidence before international courts and tribunals", "Universal criminal jurisdiction" and "Sea-level rise in relation to international law".

[11] *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10* (A/73/10), para. 369.

[12] Ibid., *Sixty-sixth Session, Supplement No. 10* (A/66/10), paras. 370–388.

memorandums and studies on topics on the agenda of the Commission, and takes note of the requests of the Commission to the Secretariat to reissue the memorandum on ways and means for making the evidence of customary international law more readily available[13] to reflect the text of the draft conclusions and commentaries on identification of customary international law adopted on second reading, and to prepare a memorandum providing information on treaties which may be of relevance to its future work on the topic "Succession of States in respect of State responsibility", contained in paragraphs 364 and 365 of the report of the Commission;

27. *Also reaffirms* its previous decisions concerning the documentation and summary records of the International Law Commission;[14]

28. *Takes note* of paragraph 386 of the report of the International Law Commission, recalls the paramount importance of multilingualism as set forth in General Assembly resolutions 69/324 of 11 September 2015 and 71/328 of 11 September 2017 on multilingualism, underlines the importance of having the documents of the Commission published in due time in the six official languages of the United Nations, and to this end requests special rapporteurs to submit their reports within the time limits specified by the Secretariat;

29. *Stresses* the need to expedite the preparation of the summary records of the International Law Commission, and welcomes the continuation of the measures taken to streamline the processing of summary records during the sixty-fifth session of the Commission,[15] which have led to a more rational use of resources, and expresses its satisfaction that the summary records of the Commission, constituting *travaux préparatoires* in the progressive development and codification of international law, will not be subject to arbitrary length restrictions;

30. *Welcomes* the institutionalization of the practice of the Secretariat to include on the website of the International Law Commission the provisional summary records in English and French relating to the work of the Commission;

31. *Also welcomes* the efforts of the Secretariat in seeking to ensure the timely and efficient processing of the documents of the International Law Commission and the institutionalization of the experimental measures taken during the sixty-eighth session of the Commission to streamline the editing of those documents;

32. *Takes note* of paragraph 385 of the report of the International Law Commission, underlines the importance of the publications of the Codification Division to the work of the Commission, welcomes in particular the issuance of the ninth edition of *The Work of the International Law Commission* in French, and reiterates its request that the Secretary-General continue to publish *The Work of the International Law Commission* in all six official languages at the beginning of each quinquennium, the *Reports of International Arbitral Awards* in English or French and the *Summaries of the Judgments, Advisory Opinions and Orders of the International Court of Justice* in all six official languages every five years;

33. *Also takes note* of paragraph 390 of the report of the International Law Commission, stresses the unique value of the *Yearbook of the International Law*

[13] A/CN.4/710.

[14] See resolutions 32/151, para. 10, and 37/111, para. 5, and all subsequent resolutions on the annual reports of the International Law Commission to the General Assembly; see also *Yearbook of the International Law Commission 1982*, vol. II (Part Two), paras. 267–269 and 271, as well as all subsequent annual reports of the International Law Commission.

[15] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 10* (A/68/10), para. 183.

Commission, and requests the Secretary-General to ensure its timely publication in all official languages;

34. *Expresses its appreciation* to Governments that have made voluntary contributions to the trust fund on the backlog relating to the *Yearbook of the International Law Commission*, and encourages further contributions to the trust fund;

35. *Takes note* of paragraph 391 of the report of the International Law Commission, expresses its satisfaction with the remarkable progress achieved in the past few years in reducing the backlog of the *Yearbook of the International Law Commission* in all six languages, welcomes the efforts made by the Division of Conference Management of the United Nations Office at Geneva, especially its Editing Section, in effectively implementing relevant resolutions of the General Assembly calling for the reduction of the backlog, encourages that Division to provide continuous necessary support to the Editing Section in advancing the *Yearbook of the International Law Commission*, and requests that updates on progress made in this respect be provided to the Commission on a regular basis;

36. *Welcomes* the continuous efforts of the Codification Division to maintain and improve the website relating to the work of the International Law Commission;

37. *Expresses the hope* that the International Law Seminar will continue to be held in connection with the sessions of the International Law Commission and that an increasing number of participants representing the principal legal systems of the world, including in particular those from developing countries, will be given the opportunity to attend the Seminar, as well as delegates to the Sixth Committee, and appeals to States to continue to make urgently needed voluntary contributions to the United Nations trust fund for the International Law Seminar;

38. *Requests* the Secretary-General to provide the International Law Seminar with adequate services, including interpretation, as required, and encourages him to continue to consider ways to improve the structure and content of the Seminar;

39. *Underlines* the importance of the records and topical summary of the debate in the Sixth Committee for the deliberations of the International Law Commission, and in this regard requests the Secretary-General to forward to the Commission, for its attention, the records of the debate on the report of the Commission at the seventy-third session of the General Assembly, together with such written statements as delegations may circulate in conjunction with their oral statements, and to prepare and distribute a topical summary of the debate, following established practice;

40. *Requests* the Secretariat to circulate to States, as soon as possible after the conclusion of the session of the International Law Commission, chapter II of its report containing a summary of the work of that session, chapter III containing the specific issues on which the views of Governments would be of particular interest to the Commission and the draft articles adopted on either first or second reading by the Commission;

41. *Also requests* the Secretariat to make the complete report of the International Law Commission available as soon as possible after the conclusion of the session of the Commission for the consideration of Member States with due anticipation and no later than the prescribed time limit for reports in the General Assembly;

42. *Encourages* the International Law Commission to continue to consider ways in which specific issues on which the views of Governments would be of

particular interest to the Commission could be framed so as to help Governments to have a better appreciation of the issues on which responses are required;

43. *Recommends* that the debate on the report of the International Law Commission at the seventy-fourth session of the General Assembly commence on 28 October 2019.

Draft resolution II
Subsequent agreements and subsequent practice in relation to the interpretation of treaties

The General Assembly,

Having considered chapter IV of the report of the International Law Commission on the work of its seventieth session,[1] which contains the draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties,

Taking note of the recommendation of the International Law Commission contained in paragraph 49 of its report,

Emphasizing the continuing importance of the codification and progressive development of international law, as referred to in Article 13, paragraph 1 (a), of the Charter of the United Nations,

Noting that the subject of subsequent agreements and subsequent practice in relation to the interpretation of treaties is of major importance in international relations,

1. *Welcomes* the conclusion of the work of the International Law Commission on subsequent agreements and subsequent practice in relation to the interpretation of treaties, and its adoption of the draft conclusions and commentaries thereto;[2]

2. *Expresses its appreciation* to the International Law Commission for its continuing contribution to the codification and progressive development of international law;

3. *Takes note* of the statements in the Sixth Committee on the subject, including those made at the seventy-third session of the General Assembly,[3] after the International Law Commission had completed its consideration of this topic in accordance with its statute;

4. *Also takes note* of the conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, the text of which is annexed to the present resolution, with the commentaries thereto, brings them to the attention of States and all who may be called upon to interpret treaties, and encourages their widest possible dissemination.

Annex
Subsequent agreements and subsequent practice in relation to the interpretation of treaties

Part One
Introduction

Conclusion 1
Scope

The present conclusions concern the role of subsequent agreements and subsequent practice in the interpretation of treaties.

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[1] *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10* (A/73/10).

[2] Ibid., para. 52.

[3] See A/C.6/73/SR.20, A/C.6/73/SR.21, A/C.6/73/SR.22, A/C.6/73/SR.23, A/C.6/73/SR.24, A/C.6/73/SR.29 and A/C.6/73/SR.30; see also the statements in the Sixth Committee that are available on the United Nations PaperSmart portal.

Part Two
Basic rules and definitions

Conclusion 2
General rule and means of treaty interpretation

1. Articles 31 and 32 of the Vienna Convention on the Law of Treaties set forth, respectively, the general rule of interpretation and the recourse to supplementary means of interpretation. These rules also apply as customary international law.

2. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose, as provided in article 31, paragraph 1.

3. Article 31, paragraph 3, provides, inter alia, that there shall be taken into account, together with the context, (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; and (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.

4. Recourse may be had to other subsequent practice in the application of the treaty as a supplementary means of interpretation under article 32.

5. The interpretation of a treaty consists of a single combined operation, which places appropriate emphasis on the various means of interpretation indicated, respectively, in articles 31 and 32.

Conclusion 3
Subsequent agreements and subsequent practice as authentic means of interpretation

Subsequent agreements and subsequent practice under article 31, paragraph 3 (a) and (b), being objective evidence of the understanding of the parties as to the meaning of the treaty, are authentic means of interpretation, in the application of the general rule of treaty interpretation reflected in article 31.

Conclusion 4
Definition of subsequent agreement and subsequent practice

1. A subsequent agreement as an authentic means of interpretation under article 31, paragraph 3 (a), is an agreement between the parties, reached after the conclusion of a treaty, regarding the interpretation of the treaty or the application of its provisions.

2. A subsequent practice as an authentic means of interpretation under article 31, paragraph 3 (b), consists of conduct in the application of a treaty, after its conclusion, which establishes the agreement of the parties regarding the interpretation of the treaty.

3. A subsequent practice as a supplementary means of interpretation under article 32 consists of conduct by one or more parties in the application of the treaty, after its conclusion.

Conclusion 5
Conduct as subsequent practice

1. Subsequent practice under articles 31 and 32 may consist of any conduct of a party in the application of a treaty, whether in the exercise of its executive, legislative, judicial or other functions.

2. Other conduct, including by non-State actors, does not constitute subsequent practice under articles 31 and 32. Such conduct may, however, be relevant when assessing the subsequent practice of parties to a treaty.

Part Three
General aspects

Conclusion 6
Identification of subsequent agreements and subsequent practice

1. The identification of subsequent agreements and subsequent practice under article 31, paragraph 3, requires, in particular, a determination whether the parties, by an agreement or a practice, have taken a position regarding the interpretation of the treaty. Such a position is not taken if the parties have merely agreed not to apply the treaty temporarily or agreed to establish a practical arrangement (modus vivendi).

2. Subsequent agreements and subsequent practice under article 31, paragraph 3, may take a variety of forms.

3. The identification of subsequent practice under article 32 requires, in particular, a determination whether conduct by one or more parties is in the application of the treaty.

Conclusion 7
Possible effects of subsequent agreements and subsequent practice in interpretation

1. Subsequent agreements and subsequent practice under article 31, paragraph 3, contribute, in their interaction with other means of interpretation, to the clarification of the meaning of a treaty. This may result in narrowing, widening, or otherwise determining the range of possible interpretations, including any scope for the exercise of discretion which the treaty accords to the parties.

2. Subsequent practice under article 32 may also contribute to the clarification of the meaning of a treaty.

3. It is presumed that the parties to a treaty, by an agreement or a practice in the application of the treaty, intend to interpret the treaty, not to amend or to modify it. The possibility of amending or modifying a treaty by subsequent practice of the parties has not been generally recognized. The present conclusion is without prejudice to the rules on the amendment or modification of treaties under the Vienna Convention on the Law of Treaties and under customary international law.

Conclusion 8
Interpretation of treaty terms as capable of evolving over time

Subsequent agreements and subsequent practice under articles 31 and 32 may assist in determining whether or not the presumed intention of the parties upon the conclusion of the treaty was to give a term used a meaning which is capable of evolving over time.

Conclusion 9
Weight of subsequent agreements and subsequent practice as a means of interpretation

1. The weight of a subsequent agreement or subsequent practice as a means of interpretation under article 31, paragraph 3, depends, inter alia, on its clarity and specificity.

2. In addition, the weight of subsequent practice under article 31, paragraph 3 (b), depends, inter alia, on whether and how it is repeated.

3. The weight of subsequent practice as a supplementary means of interpretation under article 32 may depend on the criteria referred to in paragraphs 1 and 2.

Conclusion 10
Agreement of the parties regarding the interpretation of a treaty

1. An agreement under article 31, paragraph 3 (a) and (b), requires a common understanding regarding the interpretation of a treaty which the parties are aware of and accept. Such an agreement may, but need not, be legally binding for it to be taken into account.

2. The number of parties that must actively engage in subsequent practice in order to establish an agreement under article 31, paragraph 3 (b), may vary. Silence on the part of one or more parties may constitute acceptance of the subsequent practice when the circumstances call for some reaction.

Part Four
Specific aspects

Conclusion 11
Decisions adopted within the framework of a Conference of States Parties

1. A Conference of States Parties, under these conclusions, is a meeting of parties to a treaty for the purpose of reviewing or implementing the treaty, except where they act as members of an organ of an international organization.

2. The legal effect of a decision adopted within the framework of a Conference of States Parties depends primarily on the treaty and any applicable rules of procedure. Depending on the circumstances, such a decision may embody, explicitly or implicitly, a subsequent agreement under article 31, paragraph 3 (a), or give rise to subsequent practice under article 31, paragraph 3 (b), or to subsequent practice under article 32. Decisions adopted within the framework of a Conference of States Parties often provide a non-exclusive range of practical options for implementing the treaty.

3. A decision adopted within the framework of a Conference of States Parties embodies a subsequent agreement or subsequent practice under article 31, paragraph 3, in so far as it expresses agreement in substance between the parties regarding the interpretation of a treaty, regardless of the form and the procedure by which the decision was adopted, including adoption by consensus.

Conclusion 12
Constituent instruments of international organizations

1. Articles 31 and 32 apply to a treaty which is the constituent instrument of an international organization. Accordingly, subsequent agreements and subsequent practice under article 31, paragraph 3, are, and subsequent practice under article 32 may be, means of interpretation for such treaties.

2. Subsequent agreements and subsequent practice of the parties under article 31, paragraph 3, or subsequent practice under article 32, may arise from, or be expressed in, the practice of an international organization in the application of its constituent instrument.

3. Practice of an international organization in the application of its constituent instrument may contribute to the interpretation of that instrument when applying articles 31 and 32.

4. Paragraphs 1 to 3 apply to the interpretation of any treaty which is the constituent instrument of an international organization without prejudice to any relevant rules of the organization.

Conclusion 13
Pronouncements of expert treaty bodies

1. For the purposes of these conclusions, an expert treaty body is a body consisting of experts serving in their personal capacity, which is established under a treaty and is not an organ of an international organization.

2. The relevance of a pronouncement of an expert treaty body for the interpretation of a treaty is subject to the applicable rules of the treaty.

3. A pronouncement of an expert treaty body may give rise to, or refer to, a subsequent agreement or subsequent practice by parties under article 31, paragraph 3, or subsequent practice under article 32. Silence by a party shall not be presumed to constitute subsequent practice under article 31, paragraph 3 (b), accepting an interpretation of a treaty as expressed in a pronouncement of an expert treaty body.

4. This conclusion is without prejudice to the contribution that pronouncements of expert treaty bodies make to the interpretation of the treaties under their mandates.

Draft resolution III
Identification of customary international law

The General Assembly,

Having considered chapter V of the report of the International Law Commission on the work of its seventieth session,[1] which contains the draft conclusions on identification of customary international law,

Taking note of the recommendation of the International Law Commission contained in paragraph 63 of its report,

Noting the memorandum by the Secretariat on ways and means for making the evidence of customary international law more readily available, which surveys the present state of evidence of customary international law and makes suggestions for its improvement,[2]

Noting also the bibliography on the subject prepared by the Special Rapporteur,[3]

Emphasizing the continuing importance of the codification and progressive development of international law, as referred to in Article 13, paragraph 1 (a), of the Charter of the United Nations,

Noting that the subject of identification of customary international law is of major importance in international relations,

1. *Welcomes* the conclusion of the work of the International Law Commission on identification of customary international law and its adoption of the draft conclusions and commentaries thereto;[4]

2. *Expresses its appreciation* to the International Law Commission for its continuing contribution to the codification and progressive development of international law;

3. *Takes note* of the statements in the Sixth Committee on the subject, including those made at the seventy-third session of the General Assembly,[5] after the International Law Commission had completed its consideration of this topic in accordance with its statute;

4. *Also takes note* of the conclusions on identification of customary international law, the text of which is annexed to the present resolution, with the commentaries thereto, brings them to the attention of States and all who may be called upon to identify rules of customary international law, and encourages their widest possible dissemination;

5. *Acknowledges* the utility of published digests and surveys of practice relating to international law, including those that make legislative, executive and judicial practice widely available, and encourages States to make every effort to support existing publications and libraries specialized in international law.

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[1] *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10* (A/73/10).
[2] A/CN.4/710.
[3] A/CN.4/717/Add.1.
[4] *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10* (A/73/10), para. 66.
[5] See A/C.6/73/SR.20, A/C.6/73/SR.21, A/C.6/73/SR.22, A/C.6/73/SR.23, A/C.6/73/SR.24 and A/C.6/73/SR.29; see also the statements in the Sixth Committee that are available on the United Nations PaperSmart portal.

Annex
Identification of customary international law

Part One
Introduction

Conclusion 1
Scope

The present conclusions concern the way in which the existence and content of rules of customary international law are to be determined.

Part Two
Basic approach

Conclusion 2
Two constituent elements

To determine the existence and content of a rule of customary international law, it is necessary to ascertain whether there is a general practice that is accepted as law (*opinio juris*).

Conclusion 3
Assessment of evidence for the two constituent elements

1. In assessing evidence for the purpose of ascertaining whether there is a general practice and whether that practice is accepted as law (*opinio juris*), regard must be had to the overall context, the nature of the rule, and the particular circumstances in which the evidence in question is to be found.

2. Each of the two constituent elements is to be separately ascertained. This requires an assessment of evidence for each element.

Part Three
A general practice

Conclusion 4
Requirement of practice

1. The requirement of a general practice, as a constituent element of customary international law, refers primarily to the practice of States that contributes to the formation, or expression, of rules of customary international law.

2. In certain cases, the practice of international organizations also contributes to the formation, or expression, of rules of customary international law.

3. Conduct of other actors is not practice that contributes to the formation, or expression, of rules of customary international law, but may be relevant when assessing the practice referred to in paragraphs 1 and 2.

Conclusion 5
Conduct of the State as State practice

State practice consists of conduct of the State, whether in the exercise of its executive, legislative, judicial or other functions.

Conclusion 6
Forms of practice

1. Practice may take a wide range of forms. It includes both physical and verbal acts. It may, under certain circumstances, include inaction.

2. Forms of State practice include, but are not limited to: diplomatic acts and correspondence; conduct in connection with resolutions adopted by an international organization or at an intergovernmental conference; conduct in connection with treaties; executive conduct, including operational conduct "on the ground"; legislative and administrative acts; and decisions of national courts.

3. There is no predetermined hierarchy among the various forms of practice.

Conclusion 7
Assessing a State's practice

1. Account is to be taken of all available practice of a particular State, which is to be assessed as a whole.

2. Where the practice of a particular State varies, the weight to be given to that practice may, depending on the circumstances, be reduced.

Conclusion 8
The practice must be general

1. The relevant practice must be general, meaning that it must be sufficiently widespread and representative, as well as consistent.

2. Provided that the practice is general, no particular duration is required.

Part Four
Accepted as law (*opinio juris*)

Conclusion 9
Requirement of acceptance as law (*opinio juris*)

1. The requirement, as a constituent element of customary international law, that the general practice be accepted as law (*opinio juris*) means that the practice in question must be undertaken with a sense of legal right or obligation.

2. A general practice that is accepted as law (*opinio juris*) is to be distinguished from mere usage or habit.

Conclusion 10
Forms of evidence of acceptance as law (*opinio juris*)

1. Evidence of acceptance as law (*opinio juris*) may take a wide range of forms.

2. Forms of evidence of acceptance as law (*opinio juris*) include, but are not limited to: public statements made on behalf of States; official publications; government legal opinions; diplomatic correspondence; decisions of national courts; treaty provisions; and conduct in connection with resolutions adopted by an international organization or at an intergovernmental conference.

3. Failure to react over time to a practice may serve as evidence of acceptance as law (*opinio juris*), provided that States were in a position to react and the circumstances called for some reaction.

Part Five
Significance of certain materials for the identification of customary international law

Conclusion 11
Treaties

1. A rule set forth in a treaty may reflect a rule of customary international law if it is established that the treaty rule:

(a) codified a rule of customary international law existing at the time when the treaty was concluded;

(b) has led to the crystallization of a rule of customary international law that had started to emerge prior to the conclusion of the treaty; or

(c) has given rise to a general practice that is accepted as law (*opinio juris*), thus generating a new rule of customary international law.

2. The fact that a rule is set forth in a number of treaties may, but does not necessarily, indicate that the treaty rule reflects a rule of customary international law.

Conclusion 12
Resolutions of international organizations and intergovernmental conferences

1. A resolution adopted by an international organization or at an intergovernmental conference cannot, of itself, create a rule of customary international law.

2. A resolution adopted by an international organization or at an intergovernmental conference may provide evidence for determining the existence and content of a rule of customary international law, or contribute to its development.

3. A provision in a resolution adopted by an international organization or at an intergovernmental conference may reflect a rule of customary international law if it is established that the provision corresponds to a general practice that is accepted as law (*opinio juris*).

Conclusion 13
Decisions of courts and tribunals

1. Decisions of international courts and tribunals, in particular of the International Court of Justice, concerning the existence and content of rules of customary international law are a subsidiary means for the determination of such rules.

2. Regard may be had, as appropriate, to decisions of national courts concerning the existence and content of rules of customary international law, as a subsidiary means for the determination of such rules.

Conclusion 14
Teachings

Teachings of the most highly qualified publicists of the various nations may serve as a subsidiary means for the determination of rules of customary international law.

Part Six
Persistent objector

Conclusion 15
Persistent objector

1. Where a State has objected to a rule of customary international law while that rule was in the process of formation, the rule is not opposable to the State concerned for so long as it maintains its objection.

2. The objection must be clearly expressed, made known to other States, and maintained persistently.

3. The present conclusion is without prejudice to any question concerning peremptory norms of general international law (*jus cogens*).

Part Seven
Particular customary international law

Conclusion 16
Particular customary international law

1. A rule of particular customary international law, whether regional, local or other, is a rule of customary international law that applies only among a limited number of States.

2. To determine the existence and content of a rule of particular customary international law, it is necessary to ascertain whether there is a general practice among the States concerned that is accepted by them as law (*opinio juris*) among themselves.

United Nations A/73/557

General Assembly

Distr.: General
13 November 2018

Original: English

Seventy-third session
Agenda item 81

United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

Report of the Sixth Committee

Rapporteur: Ms. Nadia Alexandra **Kalb** (Austria)

I. Introduction

1. The item entitled "United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law" was included in the provisional agenda of the seventy-third session of the General Assembly pursuant to Assembly resolution 72/115 of 7 December 2017.

2. At its 3rd plenary meeting, on 21 September 2018, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.

3. The Sixth Committee considered the item at its 18th, 19th and 35th meetings, on 19 October and on 13 November 2018. The views of the representatives who spoke during the Committee's consideration of the item are reflected in the relevant summary records.[1]

4. For its consideration of the item, the Committee had before it the report of the Secretary-General (A/73/415).

II. Consideration of draft resolution A/C.6/73/L.25

5. At the 35th meeting, on 13 November, the representative of Ghana, on behalf of the Bureau, introduced a draft resolution entitled "United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law" (A/C.6/73/L.25).

6. At the same meeting, the Committee adopted draft resolution A/C.6/73/L.25, without a vote (see para. 7).

[1] A/C.6/73/SR.18, A/C.6/73/SR.19 and A/C.6/73/SR.35.

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Please recycle

III. Recommendation of the Sixth Committee

7. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

The General Assembly,

Recalling its resolution 2099 (XX) of 20 December 1965, in which the General Assembly established the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law to contribute towards a better knowledge of international law as a means of strengthening international peace and security and promoting friendly relations and cooperation among States,

Reaffirming that the Programme of Assistance is a core activity of the United Nations and that it has provided the foundation for the efforts of the United Nations to promote a better knowledge of international law for more than half a century,

Recognizing the major contribution of the Programme of Assistance to the teaching and dissemination of international law for the benefit of lawyers in all countries, legal systems and regions of the world for more than half a century and the importance of ensuring the successful continuation of the Programme for the benefit of present and future generations of lawyers,

Emphasizing the important contribution of the Programme of Assistance, in particular the United Nations Regional Courses in International Law and the United Nations Audiovisual Library of International Law, to the furtherance of United Nations rule of law programmes and activities,

Reaffirming that the increasing demand for international law training and dissemination activities creates new challenges for the Programme of Assistance,

Recognizing the importance of the Programme of Assistance effectively reaching its beneficiaries, including with regard to languages, while bearing in mind limitations on available resources,

Taking note with appreciation of the report of the Secretary-General on the implementation of the Programme of Assistance[1] and the views of the Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, which are contained in the report,

Noting with satisfaction that resources have been provided under the programme budget for the organization of the United Nations Regional Courses in International Law on an annual basis and the further development of the United Nations Audiovisual Library of International Law,

Welcoming the organization, for the third time in the history of the Programme of Assistance, of all three of the United Nations Regional Courses in International Law, for Africa, for Asia-Pacific and for Latin America and the Caribbean, in the same calendar year,

[1] A/73/415.

Noting with satisfaction that the Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea was awarded in 2018,

Considering that international law should occupy an appropriate place in the teaching of legal disciplines at all universities,

Convinced that States, international and regional organizations, universities and institutions should be encouraged to give further support to the Programme of Assistance and to increase their activities to promote the teaching, study, dissemination and wider appreciation of international law, in particular those activities which are of special benefit to persons from developing countries,

Reaffirming that in the conduct of the Programme of Assistance it would be desirable to use as far as possible the resources and facilities made available by Member States, international and regional organizations, universities, institutions and others,

Reaffirming also the hope that, in appointing highly qualified lecturers for the seminars to be held within the framework of the fellowship programmes in international law, account would be taken of the need to secure the representation of major legal systems and balance among various geographical regions,

1. *Reiterates its approval* of the guidelines and recommendations contained in section III of the reports of the Secretary-General,[2] in particular those designed to strengthen and revitalize the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law in response to the increasing demand for international law training and dissemination activities;

2. *Authorizes* the Secretary-General to carry out the activities specified in his report[1] in 2019, including the following activities to be financed from provisions in the regular budget:

(a) The International Law Fellowship Programme, with a minimum of 20 fellowships;

(b) The United Nations Regional Courses in International Law for Africa, for Asia-Pacific and for Latin America and the Caribbean, with a minimum of 20 fellowships for each course;

(c) The United Nations Audiovisual Library of International Law, including its continuation and further development;

(d) The dissemination of legal publications and lectures of the Audiovisual Library to developing countries to the extent that there are sufficient resources;

3. *Also authorizes* the Secretary-General to further expand the activities referred to in paragraph 2 above, to be financed from voluntary contributions received pursuant to paragraphs 16, 25 and 26 below;

4. *Commends* the Codification Division of the Office of Legal Affairs of the Secretariat for the cost-saving measures undertaken with regard to the International Law Fellowship Programme and the United Nations Regional Courses in International Law to increase the number of fellowships for the training courses financed from provisions in the regular budget, taking into account the number of applications for these courses;

5. *Authorizes* the Secretary-General to award additional fellowships for the training courses from available resources under the programme budget for the

[2] A/70/423, A/71/432, A/72/517 and A/73/415.

Programme of Assistance and from voluntary contributions received pursuant to paragraph 26 below;

6. *Requests* the Secretary-General to consider admitting, for participation in the training courses, self-funded candidates present in the host country or from countries willing to bear the entire cost of their participation;

7. *Authorizes* the Secretary-General to award a minimum of one scholarship in 2019 under the Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea, subject to the availability of funds from voluntary contributions;

8. *Requests* the Secretary-General to continue to include resources under the proposed programme budget for 2020 for the International Law Fellowship Programme, the United Nations Regional Courses in International Law for Africa, for Asia-Pacific and for Latin America and the Caribbean and for the continuation and further development of the United Nations Audiovisual Library of International Law;

9. *Expresses its appreciation* to the Secretary-General for the activities conducted under the Programme of Assistance and, in particular, for the efforts to strengthen, expand and enhance the international law training and dissemination activities within the framework of the Programme in 2018;

10. *Encourages* the Secretary-General to support the establishment of alumni networks of participants of the training programmes organized under the Programme of Assistance;

11. *Commends* the Secretary-General for the continuation and further development of the United Nations Audiovisual Library of International Law as a major contribution to the teaching and dissemination of international law around the world, and notes with appreciation the efforts of the Codification Division to enhance the accessibility of the Audiovisual Library by making all lectures in the Lecture Series available as podcasts;

12. *Recognizes* the importance of the United Nations legal publications prepared by the Office of Legal Affairs, and once again requests the Secretary-General to issue the publications referred to in his previous report[3] in various formats, including hard copy publications, which are essential for developing countries;

13. *Expresses its appreciation* for the efforts undertaken by the Codification Division to bring up to date the United Nations legal publications, which greatly enhanced the timely issuance thereof and made possible the preparation of legal training materials, and encourages the Division to continue to explore ways of sustaining such efforts into the next biennium, subject to the availability of resources;

14. *Notes with satisfaction* the issuance of volume XXXI of the *Reports of International Arbitral Awards*;

15. *Expresses its appreciation* for the issuance of the English-language edition of the *International Law Handbook: Collection of Instruments* as a valuable resource for international law education on a broad range of core subjects of international law in its training courses and for academic institutions in developing countries to promote international law education in those countries;

16. *Also expresses its appreciation* for the issuance of the *Recueil de droit international: Collection d'instruments*, the French language equivalent of the *International Law Handbook*, and requests Member States to provide the voluntary contributions necessary to ensure the completion of such a handbook in the other

[3] A/70/423, para. 45.

official languages of the United Nations, as well as its dissemination in developing countries;

17. *Requests* the Codification Division to continue to maintain and expand its websites listed in the annex to the report of the Secretary-General as an invaluable tool for the dissemination of international law materials as well as for advanced legal research;

18. *Requests* that interns and research assistants be enlisted for the preparation of materials for the United Nations Audiovisual Library of International Law;

19. *Welcomes* the efforts of the Codification Division to revitalize and conduct the United Nations Regional Courses in International Law as an important training activity;

20. *Expresses its appreciation* to Ethiopia, Chile and Thailand for hosting the United Nations Regional Courses in International Law for Africa, for Latin America and the Caribbean and for Asia-Pacific in 2018;

21. *Expresses its appreciation* to the African Union for the valuable contribution it continues to make to the United Nations Regional Course in International Law for Africa;

22. *Once again encourages* the Codification Division to cooperate with the African Institute of International Law, dedicated to offering higher learning and research in international law needed for the development of Africa, in the implementation of the relevant activities under the Programme of Assistance;

23. *Expresses its appreciation* to the Hague Academy of International Law for the valuable contribution it continues to make to the Programme of Assistance, which has enabled candidates under the International Law Fellowship Programme to attend and participate in the Fellowship Programme in conjunction with courses at the Academy;

24. *Notes with appreciation* the contributions of the Hague Academy to the teaching, study, dissemination and wider appreciation of international law, and calls upon Member States and interested organizations to give favourable consideration to the appeal of the Academy for a continuation of support and a possible increase in their financial contributions, to enable the Academy to carry out its activities, particularly those relating to the summer and winter courses, regional courses and programmes of the Centre for Studies and Research in International Law and International Relations;

25. *Requests* the Secretary-General to continue to publicize the Programme of Assistance and periodically to invite Member States, universities, philanthropic foundations and other interested national and international institutions and organizations, as well as individuals, to make voluntary contributions towards the financing of the Programme or otherwise to assist in its implementation and possible expansion;

26. *Reiterates its request* to Member States and interested organizations, institutions and individuals to make voluntary contributions for the United Nations Audiovisual Library of International Law and for the United Nations Regional Courses in International Law organized by the Codification Division as an important complement to the International Law Fellowship Programme;

27. *Expresses its appreciation* to those Member States that have made voluntary contributions to support the Programme of Assistance;

28. *Requests* the Secretary-General to report to the General Assembly at its seventy-fourth session on the implementation of the Programme of Assistance in 2019;

and, following consultations with the Advisory Committee on the Programme of Assistance, to submit recommendations regarding the Programme in subsequent years;

29. *Decides* to include in the provisional agenda of its seventy-fourth session the item entitled "United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law".

United Nations A/73/558

General Assembly

Distr.: General
13 November 2018

Original: English

Seventy-third session
Agenda item 90

Protection of persons in the event of disasters

Report of the Sixth Committee

Rapporteur: Ms. Nadia Alexandra **Kalb** (Austria)

I. Introduction

1. The item entitled "Protection of persons in the event of disasters" was included in the provisional agenda of the seventy-third session of the General Assembly pursuant to Assembly resolution 71/141 of 13 December 2016.

2. At its 3rd plenary meeting, on 21 September 2018, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.

3. The Sixth Committee considered the item at its 31st and 35th meetings, on 1 and 13 November 2018. The views of the representatives who spoke during the Committee's consideration of the item are reflected in the relevant summary records.[1]

4. For its consideration of the item, the Committee had before it the report of the Secretary-General (A/73/229).

II. Consideration of draft resolution A/C.6/73/L.26

5. At the 35th meeting, on 13 November, the representative of Thailand, on behalf of the Bureau, introduced a draft resolution entitled "Protection of persons in the event of disasters" (A/C.6/73/L.26).

6. At the same meeting, the Committee adopted draft resolution A/C.6/73/L.26 without a vote (see para. 7).

[1] A/C.6/73/SR.31 and A/C.6/73/SR.35.

Please recycle

III. Recommendation of the Sixth Committee

7. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Protection of persons in the event of disasters

The General Assembly,

Recalling its resolution 71/141 of 13 December 2016, in which it took note of the draft articles on the protection of persons in the event of disasters adopted by the International Law Commission at its sixty-eighth session,[1]

Recalling also that the Commission decided to recommend to the General Assembly the elaboration of a convention on the basis of the draft articles,[2]

Noting with concern the increasing number of disasters in the world, as well as their intensity and impact on affected populations,

Emphasizing the continuing importance of the codification and progressive development of international law, as referred to in Article 13, paragraph 1 (a), of the Charter of the United Nations,

Noting that the subject of the protection of persons in the event of disasters is of major importance in the relations of States,

1. *Takes note* of the views and comments expressed in the debates of the Sixth Committee at the seventy-third session of the General Assembly on this topic,[3] as well as the comments and observations received from Governments on the draft articles on the protection of persons in the event of disasters and on any future action thereon;[4]

2. *Also takes note* of the draft articles on the protection of persons in the event of disasters;[1]

3. *Brings to the attention* of States the recommendation by the International Law Commission that a convention be elaborated on the basis of the draft articles,[2] and requests the Secretary-General to invite Governments that have not yet done so to submit comments thereon;

4. *Decides* to include in the provisional agenda of its seventy-fifth session the item entitled "Protection of persons in the event of disasters".

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[1] *Official Records of the General Assembly, Seventy-first Session, Supplement No. 10* (A/71/10), para. 48.

[2] Ibid., para. 46.

[3] See A/C.6/73/SR.31.

[4] See A/73/229.

United Nations A/73/559

General Assembly

Distr.: General
13 November 2018

Original: English

Seventy-third session
Agenda item 123

Revitalization of the work of the General Assembly

Report of the Sixth Committee

Rapporteur: Ms. Nadia Alexandra **Kalb** (Austria)

I. Introduction

1. The item entitled "Revitalization of the work of the General Assembly" was included in the provisional agenda of the seventy-third session of the General Assembly pursuant to Assembly resolution 58/316 of 1 July 2004.

2. At its 3rd plenary meeting, on 21 September 2018, the General Assembly, on the recommendation of the General Committee, decided to allocate the item to all the Main Committees for the purpose of discussing their working methods and considering and taking action on their respective tentative programmes of work for the seventy-fourth session of the General Assembly.

3. The Sixth Committee considered the item at its 34th and 35th meetings, on 6 and 13 November 2018. The views of the representatives who spoke during the Committee's consideration of the item are reflected in the relevant summary records.[1]

II. Consideration of draft decision A/C.6/73/L.27

4. At the 35th meeting, on 13 November, the Chair introduced a draft decision containing the provisional programme of work of the Committee for the seventy-fourth session of the General Assembly, as proposed by the Bureau (A/C.6/73/L.27).

5. At the same meeting, the Committee adopted draft decision A/C.6/73/L.27 (see para. 6).

[1] A/C.6/73/SR.34 and A/C.6/73/SR.35.

Please recycle

III. Recommendation of the Sixth Committee

6. The Sixth Committee recommends to the General Assembly the adoption of the following draft decision:

Provisional programme of work of the Sixth Committee for the seventy-fourth session of the General Assembly

The General Assembly notes that the Sixth Committee has decided to adopt the following provisional programme of work for the seventy-fourth session of the General Assembly, as proposed by the Bureau:

Provisional programme of work*

7 October	Organization of work of the Sixth Committee
7 and 8 October	Measures to eliminate international terrorism
9 October	Criminal accountability of United Nations officials and experts on mission
10 and 11 October	The rule of law at the national and international levels
11 October	Responsibility of States for internationally wrongful acts
	Diplomatic protection
14 and 15 October	The scope and application of the principle of universal jurisdiction
15 October	Administration of justice at the United Nations
17 October	Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization
18 October	Request(s) for observer status
21 October	Report of the United Nations Commission on International Trade Law on the work of its fifty-second session
22 October	Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm
22 October	The law of transboundary aquifers
25 October	United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

* Indicating provisional dates in 2019 for debates under the respective items without prejudice to the allocation of additional meetings for working groups established and Secretariat briefings convened by the Sixth Committee.

28 October to 1 November and 5 and 6 November	Report of the International Law Commission on the work of its seventy-first session
11 November	Report of the Committee on Relations with the Host Country
12 November	Revitalization of the work of the General Assembly
20 November	Programme planning
	Election of the officers of the Main Committees
24 October and 7 November	Reserved

United Nations A/73/560

General Assembly

Distr.: General
14 November 2018

Original: English

Seventy-third session
Agenda item 91

Strengthening and promoting the international treaty framework

Report of the Sixth Committee

Rapporteur: Ms. Nadia Alexandra **Kalb** (Austria)

I. Introduction

1. The item entitled "Strengthening and promoting the international treaty framework" was included in the provisional agenda of the seventy-third session of the General Assembly at the request of Argentina, Austria, Brazil, Italy and Singapore.

2. At its 3rd plenary meeting, on 21 September 2018, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.

3. The Sixth Committee considered the item at its 5th and 35th meetings, on 5 October and 13 November 2018. The views of the representatives who spoke during the Committee's consideration of the item are reflected in the relevant summary records.[1]

4. For its consideration of the item, the Committee had before it a letter dated 7 June 2018 from the Permanent Representatives of Argentina, Austria, Brazil, Italy and Singapore to the United Nations addressed to the Secretary-General (A/73/141), in which reference was made to the report of the Secretary-General on the review of the regulations to give effect to Article 102 of the Charter of the United Nations (A/72/86).

II. Consideration of draft resolution A/C.6/73/L.28

5. At the 35th meeting, on 13 November, the representative of Brazil, on behalf of the Bureau, introduced a draft resolution entitled "Strengthening and promoting the international treaty framework" (A/C.6/73/L.28). The Secretary informed the Committee that the draft resolution had no budgetary implications for the current biennium.

6. At the same meeting, the Committee adopted draft resolution A/C.6/73/L.28 without a vote (see para. 7).

[1] A/C.6/73/SR.5 and A/C.6/73/SR.35.

Please recycle

III. Recommendation of the Sixth Committee

7. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Strengthening and promoting the international treaty framework

The General Assembly,

Recalling its resolutions 23 (I) of 10 February 1946, 97 (I) of 14 December 1946, 364 B (IV) of 1 December 1949, 482 (V) of 12 December 1950, 32/144 of 16 December 1977, 33/141 A of 19 December 1978 and 51/158 of 16 December 1996,

Recalling also its resolution 71/328 of 11 September 2017, which recognizes that multilingualism is a core value of the Organization that contributes to the achievement of the goals of the United Nations,

Conscious of the obligations resulting from Article 102 of the Charter of the United Nations and the importance of treaties in the development of international law and the international legal order,

Noting with appreciation the role of the Secretariat, in particular the Treaty Section of the Office of Legal Affairs, in the implementation of Article 102 of the Charter,

Noting that the considerable increase in the number of treaties submitted for registration over the past years has led to the growth in the volume of work carried out by the Treaty Section, contributing to the accumulation of unpublished treaties,

Noting also that, while the authentic texts of registered treaties are promptly made available online through the electronic treaty database, there is currently a significant backlog in the publication of the United Nations *Treaty Series* due to growing delays in the translation of treaties related, inter alia, to the limited resources available for the publication process,

Recognizing the importance of the expeditious processing, registration and publication of treaties and treaty-related actions,

Supporting the efforts of the Secretary-General to increase the efficiency of the registration and publication process within available resources and to enhance the role played by the Treaty Section in assisting Member States in this area,

Welcoming the measures taken by the Treaty Section to expedite the publication of the United Nations *Treaty Series* and to provide electronic access to all of its publications on the website of the United Nations Treaty Collection, and recognizing the role that new technology can play in the accessibility of the United Nations *Treaty Series*,

Recognizing that practice and technology have developed considerably since the last amendment to the General Assembly regulations to give effect to Article 102 of the Charter, and acknowledging the importance of maintaining consistency with treaty-making practice in the international community,

Bearing in mind the provisions of the Vienna Convention on the Law of Treaties,[1] and considering its adoption on 22 May 1969 by the United Nations Conference on the Law of Treaties,

[1] United Nations, *Treaty Series*, vol. 1155, No. 18232.

Convinced of the need to further gather and exchange views on practice relating to the strengthening and promoting of the international treaty framework,

1. *Recalls* Article 102 of the Charter of the United Nations, reaffirms the importance of the registration and publication of treaties, as well as their accessibility, and stresses that the regulations to give effect to Article 102 should be useful and relevant to Member States and should be kept updated to assist States in implementing their obligations thereunder;

2. *Takes note* of the report of the Secretary-General entitled "Review of the regulations to give effect to Article 102 of the Charter of the United Nations"[2] submitted pursuant to its resolution 71/148 of 13 December 2016, and the recommendations contained therein for consideration by the General Assembly;

3. *Amends* the regulations as detailed in the annex to the present resolution which, as amended, will apply as from 1 February 2019;

4. *Notes* that some Member States consider that there remain outstanding issues where the regulations may need further consideration or possible updating;

5. *Reaffirms its support* for the annual treaty event organized by the Secretary-General;

6. *Welcomes* the organization of workshops on treaty practice by the Treaty Section at Headquarters and at the national and regional levels as an important capacity-building initiative, encourages the Treaty Section to continue to do so as regularly as possible, and invites States to continue to support this activity;

7. *Also welcomes* efforts to build the capacity of States in treaty law and practice, and invites Member States to consider providing targeted technical assistance, upon request, at the bilateral, regional and multilateral levels, in particular to developing countries, in order to develop and enhance their treaty practices, including in the use of information and communications technology;

8. *Further welcomes* the efforts made to develop and enhance the United Nations electronic treaty database, which provides online access to comprehensive information on the depositary functions of the Secretary-General and the registration and publication of treaties under Article 102 of the Charter, and encourages the continuation of such efforts in the future, while bearing in mind the challenges that many developing countries face in accessing information and communications technology;

9. *Recognizes* the importance of the legal publications prepared by the Treaty Section, and stresses the need to update the *Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties* in the light of new developments and practices;

10. *Acknowledges* the efforts of the depositaries in the registration of treaties under Article 102 of the Charter, and encourages the continuation of such efforts in the future;

11. *Calls upon* the Secretary-General to ensure the expedited publication of the United Nations *Treaty Series*, in accordance with the regulations, through the prompt provision of editorial and translation services, to enable effective dissemination of and access to treaties;

12. *Requests* the Secretary-General to provide, at its seventy-fifth session, a report, following broad consultations with Member States, with information on

[2] A/72/86.

practice and possible options to review the regulations, taking into account outstanding issues identified by Member States;

13. *Decides* to include in the provisional agenda of its seventy-fifth session the item entitled "Strengthening and promoting the international treaty framework".

Annex
Regulations to give effect to Article 102 of the Charter of the United Nations

Part One
Registration

Article 1

1. Every treaty or international agreement, whatever its form and descriptive name, entered into by one or more Members of the United Nations after 24 October 1945, the date of the coming into force of the Charter, shall as soon as possible be registered with the Secretariat in accordance with these regulations.

2. Registration shall not take place until the treaty or international agreement has come into force between two or more of the parties thereto.

3. Such registration may be effected by any party or in accordance with article 4 of these regulations. Without prejudice to the right of a party to a treaty or international agreement to submit it for registration, when a treaty or international agreement designates a depositary, the depositary is encouraged to effect registration unless otherwise provided in the treaty or international agreement or agreed by its parties.

4. The Secretariat shall record the treaties and international agreements so registered in a register established for that purpose.

Article 2

1. When a treaty or international agreement has been registered with the Secretariat, a certified statement regarding any subsequent action which effects a change in the parties thereto, or the terms, scope or application thereof, shall also be registered with the Secretariat.

2. The Secretariat shall record the certified statement so registered in the register established under article 1 of these regulations.

Article 3

1. Registration by a party, in accordance with article 1 of these regulations, relieves all other parties of the obligation to register. Registration by a depositary, in accordance with article 1 of these regulations, relieves all parties of the obligation to register.

2. Registration effected in accordance with article 4 of these regulations relieves all parties of the obligation to register.

Article 4

1. Every treaty or international agreement subject to article 1 of these regulations shall be registered ex officio by the United Nations in the following cases:

(a) Where the United Nations is a party to the treaty or international agreement;

(b) Where the United Nations has been authorized by the treaty or international agreement to effect registration;

(c) Where the United Nations is the depositary of a multilateral treaty or international agreement.

2. A treaty or international agreement subject to article 1 of these regulations may be registered with the Secretariat by a specialized agency in the following cases:

(a) Where the constituent instrument of the specialized agency provides for such registration;

(b) Where the treaty or international agreement has been registered with the specialized agency pursuant to the terms of its constituent instrument;

(c) Where the specialized agency has been authorized by the treaty or international agreement to effect registration.

Article 5

1. Any submission for registration under article 1 or 4 of these regulations shall include a certified copy of the treaty or international agreement, either in electronic or hard-copy format, together with a statement certifying that the text is a true and complete copy thereof.

2. The certified copy shall reproduce the text in all the languages in which the treaty or international agreement was concluded, including all annexes or attachments constituting an integral part of the treaty or international agreement. In the case of multilateral treaties or agreements, it shall also include the text of all reservations or declarations made or confirmed by the parties at the time of deposit of their instruments of consent to be bound, in all authentic languages in which these reservations or declarations were made.

3. The certifying statement shall set forth:

(a) The full title of the treaty or international agreement;

(b) The date(s) and place(s) of conclusion of the treaty or international agreement;

(c) The date on which the treaty or international agreement has come into force;

(d) The method whereby it has come into force (for example: by signature, by ratification, approval or acceptance, by accession, etcetera);

(e) The authentic languages in which it was concluded;

(f) When applicable, the names and official titles of the persons that have signed the treaty or international agreement on behalf of each party.

4. In the case of multilateral treaties or agreements, the certifying statement shall include, in addition to the information described in paragraph 3 of this article:

(a) A list of all the parties to the treaty or international agreement, indicating the date of deposit of each party's instrument of consent to be bound, the nature of such instrument (i.e. ratification, approval, acceptance, accession, etcetera) and the date of entry into force of the treaty for each party; and

(b) A certification that it includes all reservations or declarations made by parties thereto.

5. The requirements set forth in this article shall also apply to subsequent actions submitted pursuant to article 2 of these regulations.

Article 6

The date of receipt by the Secretariat of the United Nations of the treaty or international agreement registered shall be deemed to be the date of registration, provided that the date of registration of a treaty or agreement registered ex officio by the United Nations shall be the date on which the treaty or agreement first came into force between two or more of the parties thereto.

Article 7

A certificate of registration signed by the Secretary-General, or his or her representative, shall be issued to the registering party, or specialized agency or depositary, and also, upon request, to any party to the treaty or international agreement registered. Certificates of registration shall also be made public through electronic means.

Article 8

1. The register shall be kept in the English and French languages. The register shall comprise in respect of each treaty or international agreement, a record of:

(a) The serial number given in the order of registration;

(b) The title given to the instrument by the parties;

(c) The names of the parties between whom it was concluded;

(d) The dates of signature, ratification, approval or acceptance, exchange of ratification, accession, and entry into force;

(e) The duration, where appropriate;

(f) The language or languages in which it was drawn up;

(g) The name of the party, specialized agency or depositary which registers the instrument and the date of such registration;

(h) Particulars of publication in the treaty series of the United Nations.

2. Such information shall also be included in the register in regard to the statements registered under article 2 of these regulations.

3. The texts of registered treaties or international agreements, together with the certifying statements, shall remain in the custody of the Secretariat.

Article 9

The Secretary-General, or his or her representative, shall ensure that the register is publicly accessible, including through electronic means.

Part Two
Filing and recording

Article 10

The Secretariat shall file and record treaties and international agreements, other than those subject to registration under article 1 of these regulations, if they fall in the following categories:

(a) Treaties or international agreements entered into by the United Nations or by one or more of the specialized agencies;

(b) Treaties or international agreements transmitted by a Member of the United Nations which were entered into before the coming into force of the Charter, but which were not included in the treaty series of the League of Nations;

(c) Treaties or international agreements transmitted by a party not a member of the United Nations which were entered into before or after the coming into force of the Charter which were not included in the treaty series of the League of Nations.

Article 11

The provisions of articles 2, 5 and 8 of these regulations shall apply, mutatis mutandis, to all treaties and international agreements filed and recorded under article 10 of these regulations.

Part Three
Publication

Article 12

1. The Secretariat shall publish as soon as possible in a single series every treaty or international agreement which is registered or filed and recorded, in the original language or languages, followed by a translation in English and in French. The certified statements referred to in article 2 of these regulations shall be published in the same manner.

2. The Secretariat will, however, have the option not to publish in extenso a bilateral treaty or international agreement belonging to one of the following categories:

(a) Assistance and cooperation agreements of limited scope concerning financial, commercial, administrative or technical matters;

(b) Agreements relating to the organization of conferences, seminars or meetings;

(c) Agreements that are to be published otherwise than in the series mentioned in paragraph 1 of this article by the United Nations Secretariat, or by a specialized or related agency.

3. In deciding whether or not to publish in extenso a treaty or international agreement belonging to one of the categories mentioned in paragraph 2 of this article, the Secretariat shall duly take into account, inter alia, the practical value that might accrue from in extenso publication. Treaties and international agreements that the Secretariat intends not to publish in extenso shall be identified as such in the register, it being understood that a decision not to publish in extenso may be reversed at any time.

4. Any State or intergovernmental organization may obtain from the Secretary-General a copy of the text of any treaty or international agreement which it has been decided, pursuant to paragraph 2 of this article, not to publish in extenso. The Secretariat shall likewise make a copy of any such treaty or agreement available to private persons against payment.

5. In respect of each treaty or international agreement registered or filed and recorded, the series referred to in paragraph 1 of this article shall include at least the following information: the registration or recording number, the names of the parties, the title, the date and place of conclusion, the date and method of entry into force, the duration (where appropriate), the languages of conclusion, the name of the State or organization that has registered it or transmitted it for filing and recording, and, if

appropriate, references to publications in which the complete text of the treaty or international agreement is reproduced.

Article 13

The Secretariat shall make available the series referred to in article 12 of these regulations through any electronic means that may be available. It shall send printed copies of the series to Members of the United Nations, upon request.